IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX REFERENCE NO. 91 OF 1989

The Commissioner of Income-tax,
Bombay City-VI, Bombay. ...Applicant
V/s.
Shetty Garments P. Ltd. ...Respondent

Mr.Ashok Katangle for Applicant.
Mr.Asifa Khan for Respondent.

CORAM : V.C. DAGA AND
A.S. AGUIAR, JJ.
DATED : JULY 1, 2005.

P.C. :-

. By this reference under Section 256(1) of the Income-Tax Act, 1961, the Income Tax Appellate Tribunal has referred the following question of law for the opinion of this Court :-

"Whether the assessee was entitled to investment allowance in assessment years 1977-78 and 1978-79 of Rs.22,944/- and Rs.28,148/- respectively."

2. Heard rival parties. Perused reference proceedings.

3. This Court in the case of **Commissioner of Income**

Tax V/s. Camco Colour Co. (2002) 254 ITR 565 ruled that the instructions issued by the Central Board of Direct Taxes, New Delhi, dated 27th March, 2000; wherein monetary limit for the department for filing reference to the High Court earlier fixed for Rs.50,000/- came to be revised and fresh instructions are issued to file references only in cases where tax effect exceeds Rs.2,00,000/-, are binding on the Department.

4. The above instructions dated 27th March, 2000 reflect the policy decision taken by the Board not to raise questions of law where the tax effect is less than the amount prescribed in the above circular with a view to reduce litigations before High Courts and Supreme Court. The said circular is binding on the Revenue though learned Counsel tried to contend that the said circular is not applicable to the old referred cases. However, he could not take his submission to a logical end.

5. One fails to understand how Revenue can contend

that so far as new cases are concerned, circular issued by the Board is binding on them and in compliance with the said instructions, they do not file references if the tax effect is less than Rs.2 lakhs. But the same approach is not adopted with respect to the old referred cases even if the tax effect is less than Rs.2 lakhs. In our view, there is no logic behind this approach.

6. This Court can very well take judicial notice of the fact that by passage of time money value has gone down, cost of litigation expenses has gone up, the assessees on the file of the departments have increased; consequently, burden on the department has also increased to a tremendous extent. The corridors of the superior courts are chocked with huge pendency of cases. In this view of the matter, the Board has rightly taken decision not to file references if the tax effect is less than Rs.2 lakhs. The same policy for old matters needs to be adopted by the department. In our view, the Board’s circular dated 27th March, 2000 is very much applicable even to the old references which are still undecided. The department is not justified in

proceeding with the old references wherein the tax impact is minimal. Thus, there is no justification to proceed with the decades old references having negligible tax effect.

7. We, for the above reasons, do not think it necessary to answer the reference made to this Court for the Assessment Years 1977-78 and 1978-79 having negligible tax effect. Accordingly, reference stands returned unanswered with no order as to costs.

(A.S. AGUIAR, J.) **(V.C. DAGA, J.)**